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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1293

**Introduced by Assembly Member Oropeza
(Coauthor: Assembly Member Jones)**

February 22, 2005

An act to amend Sections 8030.2, 8030.4, 8030.6, and 8030.8 of the Business and Professions Code, relating to shorthand reporters.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, as amended, Oropeza. Transcript Reimbursement Fund.

Existing law establishes the Court Reporters Board of California and makes it responsible for issuing a certificate to practice shorthand reporting to qualified applicants. Under existing law, until July 1, 2011, *excess funds, as specified*, generated by the initial certificate fee collected by the board, ~~as specified~~, are used to provide shorthand reporting services for indigent persons, as defined, and are ~~deposited~~ *transferred from the Court Reporters' Fund* into the Transcript Reimbursement Fund for expenditure for that purpose. *Existing law requires that the Transcript Reimbursement Fund be maintained in an amount no less than \$300,000 for each fiscal year.*

This bill would revise the definition of indigent person for these purposes ~~and. The bill would require the establishment of the fund in the amount of \$300,000 at the beginning of each fiscal year and would prohibit the board from transferring funds exceeding that amount if the transfer would reduce the balance of the Court Reporters' Fund to an amount less than 6 months' operating budget. This bill would make the provisions establishing the Transcript Reimbursement Fund, which provides funding for shorthand reporting services, inoperative on July 1, 2009, and would repeal them on January 1, 2010, unless a later enacted statute changes those dates.~~

Existing law provides that applications for reimbursement from the Transcript Reimbursement Fund that cannot be paid from the fund due to insufficiency of the fund shall be held over until the next fiscal year to be paid out of the renewed fund.

This bill would give priority standing to those applications in the next fiscal year.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8030.2 of the Business and Professions
2 Code is amended to read:
3 8030.2. (a) To provide shorthand reporting services to
4 low-income litigants in civil cases, who are unable to otherwise
5 afford those services, funds generated by fees received by the
6 board pursuant to subdivision (c) of Section 8031 in excess of
7 funds needed to support the board's operating budget for the
8 fiscal year in which a transfer described below is made shall be
9 used by the board for the purpose of establishing and maintaining
10 a Transcript Reimbursement Fund. The Transcript
11 Reimbursement Fund shall be established by a transfer of funds
12 from the Court Reporters' Fund ~~and shall be maintained in an~~
13 ~~amount no less than in the amount of three hundred thousand~~
14 ~~dollars (\$300,000) for each fiscal year. at the beginning of each~~
15 ~~fiscal year. Notwithstanding any other provision of this article, a~~
16 ~~transfer to the Transcript Reimbursement Fund in excess of the~~
17 ~~fund balance established at the beginning of each fiscal year~~
18 ~~shall not be made by the board if the transfer will result in the~~

1 *reduction of the balance of the Court Reporters' Fund to an*
2 *amount less than six months' operating budget.*

3 (b) All moneys held in the Court Reporters' Fund on the
4 effective date of this section in excess of the board's operating
5 budget for the 1996–97 fiscal year shall be used as provided in
6 subdivision (a).

7 (c) Refunds and unexpended funds that are anticipated to
8 remain in the Transcript Reimbursement Fund at the end of the
9 fiscal year shall be considered by the board in establishing the fee
10 assessment pursuant to Section 8031 so that the assessment shall
11 maintain the level of funding for the Transcript Reimbursement
12 Fund, as specified in subdivision (a), in the following fiscal year.

13 (d) The Transcript Reimbursement Fund is hereby created in
14 the State Treasury. Notwithstanding Section 13340 of the
15 Government Code, moneys in the Transcript Reimbursement
16 Fund are continuously appropriated for the purposes of this
17 chapter.

18 (e) Applicants who have been reimbursed pursuant to this
19 chapter for services provided to litigants and who are awarded
20 court costs or attorneys' fees by judgment or by settlement
21 agreement shall refund the full amount of that reimbursement to
22 the fund within 90 days of receipt of the award or settlement.

23 (f) Subject to the limitations of this chapter, the board shall
24 maintain the fund at a level that is sufficient to pay all qualified
25 claims. To accomplish this objective, the board shall utilize all
26 refunds, unexpended funds, fees, and any other moneys received
27 by the board.

28 (g) Notwithstanding Section 16346 of the Government Code,
29 all unencumbered funds remaining in the Transcript
30 Reimbursement Fund as of June 29, 2009, shall be transferred to
31 the Court Reporters' Fund.

32 (h) This section shall become inoperative on July 1, 2009, and,
33 as of January 1, 2010, is repealed, unless a later enacted statute,
34 that becomes operative on or before January 1, 2010, deletes or
35 extends the dates on which it becomes inoperative and is
36 repealed.

37 SEC. 2. Section 8030.4 of the Business and Professions Code
38 is amended to read:

39 8030.4. As used in this chapter:

(a) “Qualified legal services project” means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) “Qualified support center” means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) “Other qualified project” means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) “Pro bono attorney” means any attorney, law firm, or legal corporation, licensed to practice law in this state, that undertakes without charge to the party, the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) “Applicant” means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term “applicant” shall not include persons appearing pro se to represent themselves at any stage of the case.

(f) (1) “Indigent person” means any of the following:

(A) A person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States.

1 (B) A person who is eligible for supplemental security income.

2 (C) A person who is eligible for, or receiving, free services
3 under the Older Americans Act or the Developmentally Disabled
4 Assistance Act.

5 (D) A person whose income is 75 percent or less of the
6 maximum level of income for lower income households as
7 defined in Section 50079.5 of the Health and Safety Code, for
8 purposes of a program that provides legal assistance by an
9 attorney in private practice on a pro bono basis.

10 (2) For the purposes of this subdivision, the income of a person
11 who is disabled shall be determined after deducting the costs of
12 medical and other disability-related special expenses.

13 (g) "Fee-generating case" means any case or matter that, if
14 undertaken on behalf of an eligible client by an attorney in
15 private practice, reasonably may be expected to result in payment
16 of a fee for legal services from an award to a client, from public
17 funds, or from an opposing party. A reasonable expectation as to
18 payment of a legal fee exists wherever a client enters into a
19 contingent fee agreement with his or her lawyer. If there is no
20 contingent fee agreement, a case is not considered fee generating
21 if adequate representation is deemed to be unavailable because of
22 the occurrence of any of the following circumstances:

23 (1) If the applicant has determined that referral is not possible
24 because of any of the following:

25 (A) The case has been rejected by the local lawyer referral
26 service, or if there is no such service, by two private attorneys
27 who have experience in the subject matter of the case.

28 (B) Neither the referral service nor any lawyer will consider
29 the case without payment of a consultation fee.

30 (C) The case is of the type that private attorneys in the area
31 ordinarily do not accept or do not accept without prepayment of
32 a fee.

33 (D) Emergency circumstances compel immediate action
34 before referral can be made, but the client is advised that, if
35 appropriate and consistent with professional responsibility,
36 referral will be attempted at a later time.

37 (2) If recovery of damages is not the principal object of the
38 case and a request for damages is merely ancillary to an action
39 for equitable or other nonpecuniary relief or inclusion of a
40 counterclaim requesting damages is necessary for effective

1 defense or because of applicable rules governing joinder of
2 counterclaims.

3 (3) If a court appoints an applicant or an employee of an
4 applicant pursuant to a statute or a court rule or practice of equal
5 applicability to all attorneys in the jurisdiction.

6 (4) In any case involving the rights of a claimant under a
7 public supported benefit program for which entitlement to benefit
8 is based on need.

9 (h) “Legal Services Corporation” means the Legal Services
10 Corporation established under the Legal Services Corporation
11 Act of 1974, Public Law 93-355, as amended.

12 (i) “Supplemental security income recipient” means an
13 individual receiving or eligible to receive payments under Title
14 XVI of the Social Security Act, Public Law 92-603, as amended,
15 or payment under Chapter 3 (commencing with Section 12000)
16 of Part 3 of Division 9 of the Welfare and Institutions Code.

17 (j) “Lawyer referral service” means a lawyer referral program
18 authorized by the State Bar of California pursuant to the rules of
19 professional conduct.

20 (k) “Older Americans Act” means the Older Americans Act of
21 1965, Public Law 89-73, as amended.

22 (l) “Rules of professional conduct” means those rules adopted
23 by the State Bar pursuant to Sections 6076 and 6077.

24 (m) “Certified shorthand reporter” means a shorthand reporter
25 certified pursuant to Article 3 (commencing with Section 8020)
26 performing shorthand reporting services pursuant to Section
27 8017.

28 (n) “Case” means a single legal proceeding from its inception,
29 through all levels of hearing, trial, and appeal, until its ultimate
30 conclusion and disposition.

31 (o) “Developmentally Disabled Assistance Act” means the
32 Developmentally Disabled Assistance and Bill of Rights Act of
33 1975, (42 U.S.C. Sec. 6001 et seq.) as amended.

34 (p) This section shall become inoperative on July 1, 2009, and,
35 as of January 1, 2010, is repealed, unless a later enacted statute,
36 that becomes operative on or before January 1, 2010, deletes or
37 extends the dates on which it becomes inoperative and is
38 repealed.

39 SEC. 3. Section 8030.6 of the Business and Professions Code
40 is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges by official reporters, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If there is no deposition transcript, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars (\$75) for a half day, or one hundred twenty-five dollars (\$125) for a full day. ~~In the event that~~ *If* a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the regular customary charges ~~of~~ *for a* transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars (\$2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except

1 that the cost of exhibits may not exceed thirty-five cents (\$0.35)
2 each or a total of thirty-five dollars (\$35) per transcript.

3 (c) The maximum amount reimbursable by the fund under
4 subdivision (b) may not exceed twenty thousand dollars
5 (\$20,000) per case per year.

6 (d) If entitled, and funds are available, the board shall
7 forthwith disburse the appropriate sum to the applicant or the
8 certified shorthand reporter when documentation as provided in
9 subdivision (d) of Section 8030.8 accompanies the application. A
10 notice shall be sent to the recipient requiring the recipient to file
11 a notice with the court in which the action is pending stating the
12 sum of reimbursement paid pursuant to this section. The notice
13 filed with the court shall also state that if the sum is subsequently
14 included in any award of costs made in the action, that the sum is
15 to be ordered refunded by the applicant to the Transcript
16 Reimbursement Fund whenever the sum is actually recovered as
17 costs. The court may not consider whether payment has been
18 made from the Transcript Reimbursement Fund in determining
19 the appropriateness of any award of costs to the parties. The
20 board shall also forthwith notify the applicant that the reimbursed
21 sum has been paid to the certified shorthand reporter and shall
22 likewise notify the applicant of the duty to refund any of the sum
23 actually recovered as costs in the action.

24 (e) If not entitled, the board shall forthwith return a copy of
25 the invoice to the applicant and the designated certified shorthand
26 reporter together with a notice stating the grounds for denial.

27 (f) The board shall complete its actions under this ~~subdivision~~
28 *section* within 30 days of receipt of the invoice and all required
29 documentation, including a completed application.

30 (g) Applications for reimbursements from the fund shall be
31 filled on a first-come basis.

32 (h) Applications for reimbursement that cannot be paid from
33 the fund due to insufficiency of the fund for that fiscal year shall
34 be held over until the next fiscal year to be paid out of the
35 renewed fund. *Applications held over shall be given a priority*
36 *standing in the next fiscal year.*

37 (i) This section shall become inoperative on July 1, 2009, and,
38 as of January 1, 2010, is repealed, unless a later enacted statute,
39 that becomes operative on or before January 1, 2010, deletes or

1 extends the dates on which it becomes inoperative and is
2 repealed.

3 SEC. 4. Section 8030.8 of the Business and Professions Code
4 is amended to read:

5 8030.8. (a) For purposes of this chapter, documentation
6 accompanying an invoice is sufficient to establish entitlement for
7 reimbursement from the Transcript Reimbursement Fund if it is
8 filed with the executive officer on an application form prescribed
9 by the board that is complete in all respects, and that establishes
10 all of the following:

11 (1) The case name and number and that the litigant or litigants
12 requesting the reimbursement are indigent persons.

13 (2) The applicant is qualified under the provisions of this
14 chapter.

15 (3) The case is not a fee-generating case, as defined in Section
16 8030.4.

17 (4) The invoice or other documentation shall evidence that the
18 certified shorthand reporter to be reimbursed was, at the time the
19 services were rendered, a duly licensed certified shorthand
20 reporter.

21 (5) The invoice shall be accompanied by a statement, signed
22 by the applicant, stating that the charges are for transcripts
23 actually provided as indicated on the invoice.

24 (6) The applicant has acknowledged, in writing, that as a
25 condition of entitlement for reimbursement that the applicant
26 agrees to refund the entire amount disbursed from the Transcript
27 Reimbursement Fund from any costs or attorneys' fees awarded
28 to the applicant by the court or provided for in any settlement
29 agreement in the case.

30 (7) The certified shorthand reporter's invoice for transcripts
31 shall include separate itemizations of charges claimed, as
32 follows:

33 (A) Total charges and rates for customary services in
34 preparation of an original transcript and one copy or a copy of
35 the transcript of depositions.

36 (B) Total charges and rates for expedited deposition
37 transcripts.

38 (C) Total charges and rates in connection with transcription of
39 court proceedings.

1 (b) For an applicant claiming to be eligible pursuant to
2 subdivision (a), (b), or (c) of Section 8030.4, a letter from the
3 director of the project or center, certifying that the project or
4 center meets the standards set forth in one of those subdivisions
5 and that the litigant or litigants are indigent persons, is sufficient
6 documentation to establish eligibility.

7 (c) For an applicant claiming to be eligible pursuant to
8 subdivision (d) of Section 8030.4, a letter certifying that the
9 applicant meets the requirements of that subdivision, that the
10 case is not a fee-generating case, as defined in subdivision (g) of
11 Section 8030.4, and that the litigant or litigants are indigent
12 persons, together with a letter from the director of a project or
13 center defined in subdivision (a), (b), or (c) of Section 8030.4
14 certifying that the litigant or litigants had been referred by that
15 project or center to the applicant, is sufficient documentation to
16 establish eligibility.

17 (d) The applicant may receive reimbursement directly from the
18 board when the applicant has previously paid the certified
19 shorthand reporter for transcripts as provided in Section 8030.6.
20 To receive payment directly, the applicant shall submit, in
21 addition to all other required documentation, an itemized
22 statement signed by the certified shorthand reporter performing
23 the services that describes payment for transcripts in accordance
24 with the requirements of Section 8030.6.

25 (e) The board may prescribe appropriate forms to be used by
26 applicants and certified shorthand reporters to facilitate these
27 requirements.

28 (f) This chapter does not restrict the contractual obligation or
29 payment for services, including, but not limited to, billing the
30 applicant directly, during the pendency of the claim.

31 (g) This section shall become inoperative on July 1, 2009, and,
32 as of January 1, 2010, is repealed, unless a later enacted statute,
33 that becomes operative on or before January 1, 2010, deletes or
34 extends the dates on which it becomes inoperative and is
35 repealed.